



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Mr. Trent B. Krienke
Davis & Wilkerson, P.C.
P.O. Box 2283
Austin, Texas 78768-2283

OR2009-11086

Dear Mr. Krienke:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 352578.

The Gainesville Hospital District d/b/a North Texas Medical Center (the "center"), which you represent, received a request for several categories of information related to the center's services, staff, and strategic plan. You state that the center has no responsive information related to some categories of the request.¹ You also state that some responsive information will be made available to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 161.032 of the Health and Safety Code, which provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

...

(c) Records, information, or reports of a medical committee . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). A "medical committee" is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care facility. *See id.* § 161.031(a). The term also encompasses "a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution." *Id.* § 161.031(b).

The precise scope of section 161.032 has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that "documents generated by the committee in order to conduct open and thorough review" are confidential. This protection extends "to documents that have been prepared by or at the direction of the committee for committee purposes." *Jordan*, 701 S.W.2d at 647-48. However, this protection does not extend to documents "gratuitously submitted to a committee" or "created without committee impetus and purpose." *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to section 161.032).

You state that, pursuant to the center's Risk Management and Organizational Performance Improvement Plans, the center has various medical committees which report to the center's Quality Committee of the Board, which ultimately reports to the Board of Directors. You state that the information at issue consists of documents created by or in connection with the center's medical committee deliberative proceedings. These documents include performance and incident reports, committee agendas and minutes, and medical staff appointment reports. You state that each document forms the basis of the center's medical committees' investigations, which "are conducted solely for the purpose of reviewing specific reported incidents, and not for the purpose of generating routine records." You state that the documents at issue are "kept separate from other hospital records and patient charts" and are

only for center medical committee purposes. Based on these representations and our review, we agree that the information at issue consists of records and proceedings of a medical committee. Accordingly, the center must withhold this information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health & Safety Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 352578

Enc. Submitted documents

c: Requestor
(w/o enclosures)